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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/764,663	01/26/2004	Derek H. Bernhart	3348.9	8803
22886	7590	01/26/2007	EXAMINER	
AFFYMETRIX, INC			LEE, WILSON	
ATTN: CHIEF IP COUNSEL, LEGAL DEPT.			ART UNIT	PAPER NUMBER
3420 CENTRAL EXPRESSWAY			2163	
SANTA CLARA, CA 95051				

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	01/26/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/764,663	BERNHART	
	<b>Examiner</b>	<b>Art Unit</b>	
	Wilson Lee	2163	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 02 November 2006.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-40 is/are pending in the application.
- 4a) Of the above claim(s) 23-27,39 and 40 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-22 and 28-38 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) 23-27,39 and 40 are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All
  - b) Some
  - c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 8/30/04.
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) Notice of Informal Patent Application
- 6) Other: \_\_\_\_\_.

**Remarks**

Applicant elects Group I of claims 1-22, 28-38 without traverse.

**Claim Rejections – 35 U.S.C. 101**

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 35-38 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Claims 35-38 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The claim is directed to a computer program and is not embodied on a computer readable medium. A claim that recites a piece of software alone without any link to a hardware component is directed to non-statutory subject matter. It is not patent eligible subject matter in accordance with *In re Warmerdam*, 31 USPQ 2d, 1354.

**Claim Rejections – 35 U.S.C. 112**

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 23-27 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding Claims 23-27, they are vague whether the invention is a system or a process invention since it claims both together.

### **Claim Rejections – 35 U.S.C. 102**

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-22, 28-31, 33-38, as best understood, are rejected under 35 U.S.C. 102(e) as being anticipated by Markowitz et al. (2003/0171876).

Regarding Claim 1, Markowitz discloses a system (see Figures 2, 3 and title) for providing an interface enabled to transfer data between a plurality of databases, comprising:

- a first database (220) constructed and arranged to store a set of one or more data, wherein the first database is associated with a workstation, and the set of one or more data includes data associated with biological probe arrays (See abstract, paragraphs 0150, 0163);
- a second database (250) constructed and arranged to store the set of one or more data, wherein the second database is associated with a server; and
- an interface (comprising 237, 260, 255) constructed and arranged to transfer the set of one or more data between the first database and the

second database based, at least in part, upon a user selection (See Figure 2).

Regarding Claim 2, Markowitz discloses that the set of one or more data includes a data file (See paragraphs 0043, 0044).

Regarding Claim 3, Markowitz discloses that the data file is a .cel file, a .dat file, a .tif file, a .chp file, or a.spt file (See paragraphs 0044, 0118, 0120, 0133, 0145, 0149, 0150).

Regarding Claim 4, Markowitz discloses that the data file is a lab data file (See paragraphs 0150, 0178).

Regarding Claim 5, Markowitz discloses that the set of one or more data includes a data object (See paragraphs 0266, 0269, 0273, 0280).

Regarding Claim 6, Markowitz discloses that the first database and second database includes a data model. (See paragraphs 0008, 0037, 0042, 0069, 0075, 0081, 0163, 0460)

Regarding Claim 7, Markowitz discloses that the data model is constructed and arranged to store and provide access to the set of one or more data. (See Figure 2, Abstract, paragraphs 0032, 0033, 0044, 0046, 0071, 0074, 0121-0127, 0280, 0283)

Regarding Claim 8, Markowitz discloses that the data model includes a relational data model. (See paragraphs 0118, 0120, 0121, 0127, 0129, 0132, 0154, 0155, 0163, 0166, 0173)

Regarding Claim 9, Markowitz discloses that the data model includes an AADM data model (See paragraph 0042).

Regarding Claim 10, Markowitz discloses that the interface includes a middleware application. (See paragraphs 0045-0047 and Figure 2).

Regarding Claim 11, Markowitz discloses that the middleware application is executed on the workstation (i.e. server or computer). (See Figure 2, paragraph 0127-0134, 0171, 0172, 0181).

Regarding Claim 12, Markowitz discloses that the middleware application is executed on the server. (See Figure 2, paragraph 0127-0134, 0171, 0172, 0181)

Regarding Claim 13, Markowitz discloses that the middleware application provides access to the set of one or more data. (See Figure 2, Abstract, paragraphs 0032, 0033, 0044, 0046, 0071, 0074, 0121-0127, 0280, 0283)

Regarding Claim 14, Markowitz discloses that the interface includes a graphical user interface (display). (See paragraphs 0195-0206, 215, 0246-0260, 0277-0282, 0297, 0312, 0318, 0319, 0321, 0324, 0326, 0332, 0343, etc)

Regarding Claim 15, Markowitz discloses that the graphical user interface (display) displays the set of one or more data based, at least in part, upon a user selection. (See paragraphs 0195-0206, 215, 0246-0260, 0277-0282, 0297, 0312, 0318, 0319, 0321, 0324, 0326, 0332, 0343, etc).

Regarding Claim 16, Markowitz discloses that the graphical user interface (display) displays a graphical illustration of space usage based, at least in part, upon a user selection.

Regarding Claim 17, Markowitz discloses that the graphical user interface (display) enables the user selection of the set of one or more data to transfer (See paragraphs 0120, 0121, 0134, 0158, 0172).

Regarding Claim 18, Markowitz discloses a method for providing a middleware application enabled to transfer data between a plurality of databases, comprising the steps of:

- providing a first database (220) associated with a workstation (See abstract, paragraphs 0150, 0163);
- providing a second database (250) associated with a server; and
- providing a middleware application wherein the middleware application (See paragraph 0047 and Figure 2) performs the step of:
  - o transferring a set of one or more data between the first database and the second database based (See paragraphs 0120, 0121, 0158, 0172), at least in part, upon a user selection; and wherein the set of one or more data includes data associated with biological probe arrays. (See Figure 2, title, Abstract, Brief Summary and paragraphs 0045-0047, 0120, 0121, 0134, 0158, 0172).

Regarding Claim 19, Markowitz discloses that the middleware application is executed on the workstation (i.e. server or computer). (See Figure 2, paragraph 0127-0134, 0171, 0172, 0181).

Regarding Claim 20, Markowitz discloses that the middleware application is executed on the server. (See Figure 2, paragraph 0127-0134, 0171, 0172, 0181).

Regarding Claim 21, Markowitz discloses that the middleware application further performs the step of providing access to the set of one or more data. (See Figure 2, Abstract, paragraphs 0032, 0033, 0044, 0046, 0071, 0074, 0121-0127, 0280, 0283)

Regarding Claim 22, Markowitz discloses that the access is provided by a graphical user interface, wherein the graphical user interface (display) displays the set of one or more data based, at least in part, upon a user selection. (See paragraphs 0195-0206, 215, 0246-0260, 0277-0282, 0297, 0312, 0318, 0319, 0321, 0324, 0326, 0332, 0343, etc).

Regarding Claim 28, Markowitz discloses a system (See Figure 2) for providing an interface enabled to transfer data between a plurality of databases, comprising:

- a first database (220) stored and executed on a workstation(See abstract, paragraphs 0150, 0163);
- a second database (250) stored and executed on a server; and wherein the workstation is constructed and arranged to store and execute the interface in system memory, and the interface (comprising 237, 260, 255) is constructed and arranged to perform the step of:
  - o transferring a set of one or more data between the first database and the second database based, at least in part, upon a user selection; and wherein the set of one or more data includes data associated with biological probe arrays. (See Figure 2, title, Abstract, Brief Summary and paragraphs 0045-0047, 0120, 0121, 0134, 0158, 0172).

Regarding Claim 29, Markowitz discloses that the interface includes a middleware application. (See paragraph 0047 and Figure 2).

Regarding Claim 30, Markowitz discloses that the interface (display) includes a graphical user interface. (See paragraphs 0195-0206, 215, 0246-0260, 0277-0282, 0297, 0312, 0318, 0319, 0321, 0324, 0326, 0332, 0343, etc).

Regarding Claim 31, Markowitz discloses that the step of transferring further comprises inherently producing a copy of each of the set of one or more data because Markowitz includes backup device for storing all data files generated by the production (See paragraphs 0154, 0180, 0181).

Regarding Claim 33, Markowitz discloses that the set of one or more data is transferred over a network. (See paragraphs 0029, 0044, 0061, 0074, 0180, 0262).

Regarding Claim 34, Markowitz discloses that the network includes the Internet. (See paragraphs 0029, 0044, 0061, 0074, 0180, 0262).

Regarding Claim 35, Markowitz discloses a computer program product for enabling transfer of a set of one or more data between a plurality of databases (250, 220) (See Figures 2, 3), wherein the computer program product comprises:

- an interface (comprising 237, 260, 255) constructed and arranged to transfer the set of one or more data between a first database and a second database based, at least in part, upon a user selection; and wherein the set of one or more data includes data associated with biological probe arrays. (See Figure 2, title, Abstract, Brief Summary and paragraphs 0120, 0121, 0158, 0172).

Regarding Claim 36, Markowitz discloses that the interface (display) includes a graphical user interface enabled to receive the user selection. (See paragraphs 0195-0206, 215, 0246-0260, 0277-0282, 0297, 0312, 0318, 0319, 0321, 0324, 0326, 0332, 0343, etc).

Regarding Claim 37, Markowitz discloses that the first database (220) is stored and executed on a workstation and the second database (250) is stored and executed on a server (See Figures 2, 3).

Regarding Claim 38, Markowitz discloses that the first database (220) is stored and executed on a first workstation and the second database (250) is stored and executed on a second workstation (See Figures 2, 3).

#### **Claim Rejections – 35 U.S.C. 103**

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claim 32, as best understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Markowitz et al. (2003/0171876).

Regarding Claim 32, Markowitz discloses this invention is able to copy files (See paragraphs 0270, 0297, 0325) and backup database (See paragraphs 0154, 0180, 0181). Although Markowitz does not explicitly disclose the copy includes a .CAB file format, CAB file is commonly known to a skilled in the art. It would have been obvious

to one ordinary skilled in the art to rename or provide .CAB file in Markowitz in order to properly identify and distinguish the copy file.

### **Conclusion**

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Kaushikkar et al. (2003/0036087) discloses a method, system and computer software for the presentation and storage of analysis results.

### **Correspondence**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Wilson Lee whose telephone number is (571) 272-1824. Papers related to the application may be submitted by facsimile transmission. Any transmission not to be considered an official response must be clearly marked "DRAFT". The official fax number is (571) 273-8300. Information regarding the status of an application may be obtained from the Patent Application Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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